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S. W. 107. Nor can such an instrument be made good by any averments. *Bagley* v. *State, supra.*

Where, however, the spurious writing is merely incomplete or obscure, it may, nevertheless, be the subject of forgery, if extrinsic facts exist whereby the holder of the paper might be enabled to defraud another. *Rembert* v. *State,* 53 Ala. 467, 25 Am. Rep. 639; *Green* v. *State,* 63 Tex. Crim. Rep. 510, 140 S. W. 444. These facts must be alleged in the indictment and be sufficient to invest the writing with legal force and enable the court to judicially see its tendency to defraud. See *Barnum* v. *State,* 15 Ohio 717, 45 Am. Dec. 601; *Green* v. *State, supra; State* v. *Floyd,* 169 Ind. 136, 81 N. E. 1153. In the absence of such averments, a writing of no apparent legal effect will not sustain the indictment. *State* v. *Thorn,* 66 N. C. 644; *Commonwealth* v. *Hinds,* 101 Mass. 209; *Goodman* v. *People,* 228 Ill. 154, 81 N. E. 830. Such averments are not necessary, however, where, in the light of common knowledge, the court can recognize from inspection the capacity of the instrument to prejudice the rights of others. See *Gordon* v. *Commonwealth,* 100 Va. 825, 41 S. E. 746, 57 L. R. A. 744; *Green* v. *State, supra.*

A contract is *per se* the subject of forgery. *People* v. *Munroe,* 100 Cal. 664, 35 Pac. 326, 24 L. R. A. 664. See *People* v. *Stork,* 133 Cal. 371, 65 Pac. 822. But an instrument to be the subject of forgery need not be one upon which, if genuine, an action could be maintained. *State* v. *Johnson,* 26 Iowa 407, 96 Am. Dec. 158. A mere *nudum pactum* will support an indictment which sets forth matter *aliunde* showing how it might be used to injure another. See *People* v. *Tomlinson, supra; Barnum* v. *State, supra.* So, too, will tickets and other instruments evidencing contracts, though they contain no express promise; provided they are accompanied by averments stating the legal contract and showing some valuable interest which would arise from ownership and possession of the instruments if valid. *In re Benson,* 34 Fed. 649; *Commonwealth* v. *Ray,* 3 Gray (Mass.) 441; *Ex parte Fischl,* 51 Tex. Crim. Rep. 63, 100 S. W. 773. It is with these last named instruments that the trading stamps of the principal case would seem to belong. They were merely incomplete evidence of a contract, and if genuine would have been the basis of a legal liability on the part of the issuing company. The decision can, therefore, hardly be reconciled with the authorities in other jurisdictions.

EVIDENCE—ADMISSIBILITY OF OTHER SIMILAR CRIMES—ABORTION.—The defendant was indicted for murdering a woman while attempting to commit an abortion upon her. The prosecution sought to introduce evidence of a previous abortion committed by the defendant, to show her knowledge and guilty intent. It was not shown that the defendant was guilty of the other abortion which it was claimed she had committed. *Held,* the evidence is inadmissible. *People* v. *Schultz-Knighten* (Ill.), 115 N. E. 140.

The rule excluding evidence of distinct substantive crimes, so firmly established in all English speaking lands, is rooted in that jealous regard for the liberty of the individual which has distinguished our jurisprudence from all others. *People* v. *Molineux,* 168 N. Y. 264, 61 N. E. 286,

62 L. R. A. 193. It protects the innocent by excluding evidence which would prejudice the jury against the accused by raising the presumption that he has again committed an offense similar to other offenses which he is shown to have committed. *King* v. *Bond* (1906), 2 K. B. 389. No person can be required to come into court, on a trial under an indictment for a specific offense, prepared to defend or explain other transactions not connected with the one for which he is on trial. *Rosenweig* v. *People,* 63 Barb. (N. Y.) 634.

However, generally speaking, evidence of other similar crimes is competent to prove the specific crime charged when it tends to establish knowledge, intent, plan, identity, or the absence of mistake or accident. See *Miller* v. *State* (Okl.), 163 Pac. 131; *People* v. *Molineux, supra.* The extent to which these exceptions may be invoked has presented a difficult problem on which the two greatest cases in which they were applied have taken diametrically opposite positions. In one it was said that all collateral facts, although they show commission of some crime other than that for which the accused is on trial, are admissible, if they tend to illustrate the defendant's guilt or innocence of the crime for which he is being tried. *Frank* v. *State,* 141 Ga. 243, 80 S. E. 1016. In the other case, instead of admitting the evidence on the ground that there was no case directly excluding the evidence sought to be introduced, the court excluded it because it could not be placed under one of the definitely settled exceptions. *People* v. *Molineux, supra.* The test of whether the evidence of the other crime fairly aids in establishing the commission by the defendant of the crime for which he is being tried may well be used; but the language of this rule should be interpreted in the light of the well established rules of evidence. *People* v. *Molineux, supra.* It has been held that the test of admissibility of evidence of other offenses than the one charged is the connection of the offenses in the mind of the criminal. *People* v. *Cunningham,* 66 Cal. 668, 6 Pac. 700.

It is generally conceded that evidence of other attempts to commit abortion on the same woman is admissible to prove the intent with which the abortion was committed for which the defendant was indicted, and also knowledge of the woman's pregnant condition. *Sullivan* v. *State,* 121 Ga. 183, 48 S. E. 949; *Commonwealth* v. *Corkin,* 136 Mass. 429. Subsequent as well as prior acts may be admitted under this apparent exception. *Commonwealth* v. *Corkin, supra.* See *Lamb* v. *State,* 66 Md. 285, 7 Atl. 399. Several courts have stated that the reason for the general rule not obtaining in these cases is that the different efforts to procure the same abortion cannot be considered as representing two separate and distinct offenses, but were parts of the same transaction. *Scott* v. *People,* 141 Ill. 195, 30 N. E. 329. See *King* v. *State,* 35 Tex. Cr. Rep. 472, 34 S. W. 282. But see *Commonwealth* v. *Corkin, supra.*

Likewise, where a felonious intent is an essential ingredient of the crime charged, and the abortion is claimed to have been innocently or accidentally done, or when the result is claimed to have followed a legitimate act, or where there is room for such inferences, it is proper to characterize the act by proof of other acts producing the same result, as tending to show guilty knowledge and the intent with which the

particular act was done. *People* v. *Seaman,* 107 Mich. 348, 65 N. W. 203, 61 Am. St. Rep. 326; *People* v. *Hodge,* 141 Mich. 312, 104 N. W. 599, 113 Am. St. Rep. 525. But it would be a travesty upon our jurisprudence to hold in cases where the intent to commit a crime was obvious that it could ever be deemed necessary or proper to resort to proof of extraneous crimes to show guilty knowledge or intent. *People* v. *Lonsdale,* 122 Mich. 388, 81 N. W. 277. See *People* v. *Molineux, supra.*

And it must also be noted that evidence of separate crimes has not been admitted to show intent, unless it was established that they were so connected in time, place and circumstances as to make them part of one common plan. Also, where the motives of the crime have no relation to each other, evidence of them is not admissible. To hold otherwise would be to sanction violations of the general rule under the guise of an exception to it. *People* v. *Molineux, supra.* The naked fact that the same means, as by cyanide poisoning, were used in the different instances of crime, is not sufficient to connect them. *People* v. *Molineux, supra.* Therefore, evidence of other abortions has not been admitted without other evidence first being introduced showing the defendant's guilty connection with other offenses. *State* v. *Crofford,* 121 Iowa 395, 96 N. W. 889. Therefore, the decision in the principal case seems correct.

FRAUD—FALSE REPRESENTATIONS—WHAT CONSTITUTES.—The plaintiff's agent falsely represented to the defendant, a druggist not engaged in the regular business of selling silverware, that the price at which he offered to sell certain silverware was the regular wholesale price, when the price was really in excess of the regular wholesale price. The defendant, believing these statements, purchased the goods; but, upon discovering that he had been deceived, refused to pay the purchase price, and rescinded the contract. The plaintiff sued to recover the purchase money. *Held,* the defendant is not liable. *Elliott* v. *Green* (N. D.), 160 N. W. 1002.

In order to entitle a person to rescind a contract on account of false representations, the representations must have been of a material fact. *Palmer* v. *Bell,* 85 Me. 352, 27 Atl. 250. It may be said that a fact is material if the defrauded party would not have entered into the contract had he known the facts to be false. See *Smith* v. *Countryman,* 30 N. Y. 655; *White Sewing Machine Co.* v. *Bullock,* 161 N. C. 1, 76 S. E. 634. As a general rule, however, it may be said that the question of the materiality of the representation is for the jury to determine. *Stuart* v. *Lester,* 49 Hun. 58, 1 N. Y. Supp. 699.

As to what constitutes a representation of fact, the courts are much divided. Of course, expressions of opinion are not such representations of fact as will entitle the injured party to rescind the contract. *Patten* v. *Glatz,* 87 Fed. 283. See *White* v. *Stelloh,* 74 Wis. 435, 43 N. W. 99. And some courts hold that where the parties are dealing at arm's length, false representations as to the cost price made by one to induce the other to purchase are mere commendary expressions. *Beare* v. *Wright,* 14 N. D. 26, 103 N. W. 632, 69 L. R. A. 409, 8 Ann. Cas. 1057; *Holbrook* v. *Connor,* 60 Me. 578, 11 Am. Rep. 212. Where, however, the